IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11331 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALPESH RAMNIKLAL LUHANA

Versus

POLICE COMMISSIONER

Appearance:

MR DJ CHAUHAN for Petitioner

MR SAMIR DAVE, ASSTT. GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/02/2001

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution, the challenge has been made by the petitioner detenu to the order of the Police

Commissioner, Rajkot City, Rajkot dated 14th Sept. 2000, under which he was ordered to be detained as a boot-legger, in exercise of power under Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985. Challenging the legality, propriety and correctness of the order aforesaid, the learned Counsel for the petitioner raised manifold contentions, but as this petition deserves to be allowed only on one ground, I do not consider it to be appropriate as well as in the larger interest of saving the judicial time of the Court to refer, consider and decide all these contentions.

This petition was admitted on 8.11.2000 and about 3 months time was available at the disposal of the respondents if they were really desirous of filing the reply to the Special Civil Application, but none of the respondents cared to file reply. The consequences of non-filing of reply is that all the averments made by the petitioner in the Special Civil Application stand uncontroverted and are to be taken to be correct. On 24.1.2001 when this matter came up for hearing, the Court directed respondents to check from the record whether two persons namely - Dipak Natvarlal Popat and Girubha Harubha Gohil have also been detained under PASA or not. The respondents have not produced anything on the record, meaning thereby directions given by this Court as aforesaid have not been complied with. The tendency of the officers of the impersonal State, not to comply with the directions of the Court deserves to be depricated and accordingly it is depricated. From the facts that the reply to the Special Civil Application has not been filed and the specific direction of this Court contained in order dated 24.1.2001 has not been complied with, reasonably an inference can be drawn that the respondents are favouring the petitioner and do not want to create any hurdle in his way to get himself released of the detention.

The learned Counsel for the petitioner contented that the criminal complaint was registered against him on 15.6.2000, which is made use of for his detention as a boot-legger by the respondents and the order of detention has been made on 14th Sept. 2000, there is a delay of about 3 months. This unexplained delay in passing of the detention order itself is sufficient for quashing and setting aside the order of detention of the petitioner. In support of his this contention, he placed reliance on certain decisions of this Court, but as the Counsel for the respondents does not dispute the proposition of law as laid down in those decisions, it is not necessary to refer them here in this judgement. The learned Counsel

for the respondents supported the order passed by the respondent authority.

The respondents have not filed any reply to the Special Civil Application. They have not furnished any explanation whatsoever for this long delay in passing of the detention order of the petitioner. From the grounds of detention also I find that the detaining authority has not given any explanation for this long delay in making of this order. From the record of the case also the learned Counsel for the respondents has failed to point out any justification for this delay. In the result, the petition is allowed. The order of detention of the petitioner dated 14.9.2000 is quashed and set aside. The petitioner - Alpesh Ramniklal Luhana, the detenu, at present in Junagadh Jail, Junagadh be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent - State of Gujarat is directed to pay the costs of this petition to the petitioner.

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